

present the evidence against the former employee and perform other functions incident to the proceedings.

(f) A decision adverse to the former employee must be sustained by substantial evidence that he or she violated 18 U.S.C. 207 (a), (b) or (c).

(g) The presiding officer shall issue an initial decision based exclusively on the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, and shall set forth in the decision findings and conclusions, supported by reasons, on the material issues of fact and law presented on the record.

(h) Within 30 days after issuance of the initial decision, either party may appeal to the Chairman, who in that event shall issue the final decision based on the record of the proceedings or those portions thereof cited by the parties to limit the issues. If the final decision modifies or reverses the initial decision, the Chairman shall specify the findings of fact and conclusions of law that vary from those of the presiding officer.

(i) If a former employee fails to appeal from an adverse initial decision within the prescribed period of time, the presiding officer shall forward the record of the proceedings to the Chairman.

(j) In case of a former employee who filed an answer to the notice to show cause but did not request a hearing, the Chairman shall make the final decision on the record submitted by the Designated Ethics Officer pursuant to subsection (b) of this section.

(k) The Chairman, in a case where:

(1) The defense has been waived;

(2) The former employee has failed to appeal from an adverse initial decision; or

(3) The Chairman has issued a final decision that the former employee violated 18 U.S.C. 207 (a), (b) or (c) may issue an order:

(i) Prohibiting the former employee from making on behalf of any person or party (other than the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on a pending matter of business for a period not to exceed five years, or

(ii) Prescribing other appropriate disciplinary action.

PART 501—SUBPOENAS, DEPOSITIONS, AND OATHS

Sec.

501.1 Extent of authority.

501.2 Subpoenas.

501.3 Service of process.

501.4 Witnesses.

501.5 Depositions.

501.6 Documentary evidence.

501.7 Time.

AUTHORITY: Sec. 2, Pub. L. 80-896, 62 Stat. 1240, as amended (50 U.S.C. App. 2001); sec. 3, Pub. L. 81-455, 64 Stat. 12, as amended (22 U.S.C. 1622).

SOURCE: 52 FR 17559, May 11, 1987, unless otherwise noted.

§ 501.1 Extent of authority.

(a) *Subpoenas, oaths and affirmations.* The Commission or any member thereof may issue subpoenas, administer oaths and affirmations, take affidavits, conduct investigations and examine witnesses in connection with any hearing, examination, or investigation within its jurisdiction.

(b) *Certification.* The Commission or any member thereof may, for the purpose of any such hearing, examination, or investigation, certify the correctness of any papers, documents, and other matters pertaining to the administration of any laws relating to the functions of the Commission.

§ 501.2 Subpoenas.

(a) *Issuance.* A member of the Commission or a designated employee may, on such member or employee's own volition of upon written application by any party and upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas requiring persons to appear and testify or to appear and produce documents. Applications for issuance of subpoenas duces tecum shall specify the books, records, correspondence, or other documents sought. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) *Deposit for costs.* The Commission or designated employee, before issuing

any subpoena in response to any application by an interested party, may require a deposit in an amount adequate to cover fees and mileage involved.

(c) *Motion to quash.* If any person subpoenaed does not intend to comply with the subpoena, such person shall, within 15 days after the date of service of the subpoena, petition in writing to quash the subpoena. The basis for the motion must be stated in detail. Any party desiring to file an answer to a motion to quash must file such answer not later than 15 days after the filing of the motion. The Commission shall rule on the motion to quash, duly recognizing any answer thereto filed. The motion, answer, and any ruling thereon shall become part of the official record.

(d) *Appeal from interlocutory order.* An appeal may be taken to the Commission by the interested parties from the denial of a motion to quash or from the refusal to issue a subpoena for the production of documentary evidence.

(e) *Order of court upon failure to comply.* Upon the failure or refusal of any person to comply with a subpoena, the Commission may invoke the aid of the United States District Court within the jurisdiction of which the hearing, examination or investigation is being conducted, or wherein such person resides or transacts business. Such court, pursuant to the provisions of Public Law 81-696, approved August 16, 1950 (50 U.S.C. App. 2001(d)), may issue an order requiring such person to appear at the designated place of hearing, examination or investigation, then and there to give or produce testimony or documentary evidence concerning the matter in question. Any failure to obey such an order may be punished by the court as a contempt thereof. All processes in any such case may be served in the judicial district wherein such person resides or transacts business or wherever such person may be found.

§ 501.3 Service of process.

(a) *By whom served.* The Commission shall serve all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve.

(b) *Kinds of service.* Subpoenas, orders, rulings, and other processes of the Commission may be served by deliver-

ing in person, by first class or registered mail, or by telegraph or by publication.

(c) *Personal service.* Service by delivering in person may be accomplished by:

(1) Delivering a copy of the document to the person to be served, to a member of the partnership to be served, to an executive officer or a director of the corporation to be served, or to a person competent to accept service; or

(2) By leaving a copy thereof at the residence, principal office or place of business of such person, partnership, or corporation.

(3) Proof of service. The return receipt for said order, other process or supporting papers, or the verification by the person serving, setting forth the manner of said service, shall be proof of the service of the document.

(4) Service upon attorney or agent. When any party has appeared by an authorized attorney or agent, service upon such attorney or agent shall be deemed service upon the party.

(d) *Service by first class mail.* Service by first class mail shall be regarded as complete upon deposit in the United States mail properly stamped and addressed.

(e) *Service by registered mail.* Service by registered mail shall be regarded as complete on the date the return post office registered receipt for said orders, notices and other papers is received by the Commission.

(f) *Service by telegraph.* Service by telegraph shall be regarded as complete when deposited with a telegraph company properly addressed and with charges prepaid.

(g) *Service by publication.* Service by publication is completed when due notice shall have been given in the publication for the time and in the manner provided by law or rule.

(h) *Date of service.* The date of service shall be the day upon which the document is deposited in the United States mail or delivered in person, as the case may be.

(i) *Filing with Commission.* Papers required to be filed with the agency shall be deemed filed upon actual receipt by the Commission accompanied by proof of service upon parties required to be served. Upon such actual receipt the

filing shall be deemed complete as of the date of deposit in the mail or with the telegraph company as provided in paragraphs (e) and (f) of this section.

§ 501.4 Witnesses.

(a) *Examination of witnesses.* Witnesses shall appear in person and be examined orally under oath, except that for good cause shown, testimony may be taken by deposition.

(b) *Witness fees and mileage.* Witnesses summoned by the Commission on its own behalf or on behalf of a claimant or interested party shall be paid the same fees and mileage that are allowed and paid witnesses in the District Courts of the United States. Witness fees and mileage shall be paid by the Commission or by the party at whose request the witness appears.

(c) *Transcript of testimony.* Every person required to attend and testify or to submit documents or other evidence shall be entitled to retain or, on payment of prescribed costs, procure a copy of the transcript of the testimony or the documents produced.

§ 501.5 Depositions.

(a) *Application to take.* (1) An application to take a deposition shall be in writing setting forth the reason why such deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken. If such deposition is being offered in connection with a hearing or examination, the application for deposition shall be made to the Commission at least 15 days prior to the proposed date of such hearing or examination.

(2) Application to take a deposition may be made during a hearing or examination, or subsequent to a hearing or examination, only where it is shown for good cause that the facts as set forth in the application to take the deposition were not within the knowledge of the person signing the application prior to the time of the hearing or examination.

(3) The Commission or its representative shall, upon receipt of the applica-

tion and a showing of good cause, make and cause to be served upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time, the place, and where practicable the designation of the officer before whom the witness is to testify. Such officer may or may not be the one specified in the application. The order shall be served upon all parties at least 10 days prior to the date of the taking of the deposition.

(b) *Who may take.* Such deposition may be taken before the designated officer or, if none is designated, before any officer authorized to administer oaths by the laws of the United States. If the examination is held in a foreign country, it may be taken before a secretary of an embassy or legation, consul-general, consul, vice consul, or consular agent of the United States.

(c) *Examination and certification of testimony.* At the time and place specified in said order the officer taking such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony shall be reduced to writing by, or under the direction of, the presiding officer. All objections to questions or evidence shall be deemed waived unless made in accordance with paragraph (d) of this section. The officer shall not have power to rule upon any objections but shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach a certificate stating that the witness was duly sworn, that the deposition is a true record of the testimony and exhibits given by the witness and that said officer is not counsel or attorney to any of the interested parties. The officer shall immediately seal and deliver an original and two copies of said transcript, together with the officer's certificate, by registered mail to the Foreign Claims Settlement Commission, Washington, DC 20579 or to the field office designated.

(d) *Admissibility in evidence.* The deposition shall be admissible in evidence, subject to such objections to the questions and answers as were noted at the

time of taking the deposition, or within ten (10) days after the return thereof, and would be valid were the witness personally present at the hearing.

(e) *Errors and irregularities.* All errors or irregularities occurring shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(f) *Scope of use.* The deposition of a witness, if relevant, may be used if the Commission finds:

(1) That the witness has died since the deposition was taken; or

(2) that the witness is at a distance greater than 100 miles radius of Washington, DC, the designated field office or the designated place of the hearing; or

(3) that the witness is unable to attend because of other good cause shown.

(g) *Interrogatories and cross-interrogatories.* Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examinations. When a deposition is taken upon interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, such person's representative or attorney, a stenographic reporter and the presiding officer, shall be present at the examination of the witness, which fact shall be certified by such officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

(h) *Fees.* A witness whose deposition is taken pursuant to the regulations in this part, and the officer taking the deposition, shall be entitled to the same fees and mileage allowed and paid for like service in the United States District Court for the district in which the deposition is taken. Such fees shall be paid by the Commission or by the party at whose request the deposition is being taken.

§ 501.6 Documentary evidence.

Documentary evidence may consist of books, records, correspondence or other documents pertinent to any hearing, examination, or investigation within the jurisdiction of the Commission. The application for the issuance of subpoenas duces tecum shall specify the books, records, correspondence or other documents sought. The production of documentary evidence shall not be required at any place other than the witness' place of business. The production of such documents shall not be required at any place if, prior to the return date specified in the subpoena, such person either has furnished the issuer of the subpoena with a properly certified copy of such documents or has entered into a stipulation as to the information contained in such documents.

§ 501.7 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by the regulations, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

(b) *Enlargement.* When by the regulations in this chapter or by a notice given thereunder or by order of the Commission an act is required or allowed to be done at or within a specific time, the Commission for good cause shown may, at any time in its discretion (1) with or without motion, notice, or previous order or (2) upon motion, permit the act to be done after the expiration of the specified period.

PART 502—EMPLOYEE RESPONSIBILITIES AND CONDUCT

[52 FR 17559, May 11, 1987, as amended at 52 FR 19731, May 27, 1987]

Sec.

502.1 Adoption of regulations.